

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. QUILLING, Receiver	§	
for Advanced Financial Services, Inc.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 1:03-CV-0236
vs.	§	
	§	
TRADE PARTNERS, INC., MACATAWA	§	
BANK CORPORATION, successor by	§	
merger to GRAND BANK, THOMAS J.	§	
SMITH and CHRISTINE M. ZMUDKA,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION

On August 21, 2006 the Court conducted a hearing on the Receiver's Motion to Approve Settlement of All Claims of Dr. Patrick J. McNamara [Docket No. 1339]. At that time, the Receiver appeared through the Examiner, Steven A. Harr. Dr. McNamara appeared through his counsel, Kurt Bowden. The parties announced to the Court that they had reached a settlement regarding all claims of Dr. McNamara in this proceeding, including specifically all claims to that certain insurance policy referred to as SHE (H&B) (1). After hearing the terms of the settlement, the Court finds that it is in the best interest of the Receivership Estate.

Accordingly, the Magistrate Judge recommends that the motion [Docket No. 1339] be **granted**, and that all claims of Dr. Patrick J. McNamara in this proceeding be resolved as follows:

- a. The SHE (H&B) (1) policy is in line to be transferred and paid for by the purchaser of the viatical portfolio at the amount approved by the court in prior orders and shall be transferred free and clear of all liens and encumbrances, including but not limited to all claims of liens or collateral assignments asserted by Dr. Patrick J. McNamara;
- b. Upon receipt of payment by the Receiver from USI for the SHE (H&B)(1) policy, the proceeds of that sale up to the amount of \$1,075,000 will be paid promptly to Dr.

McNamara, less the amounts due from Dr. McNamara for premiums as described in (c) below;

- c. Dr. McNamara agrees to pay to the Receiver his pro-rata share of the premiums paid by the Receiver for maintenance of the SHE (H&B) (1) policy during the receivership via the formula of \$1,075,000/4,000,000 times the amount of premiums actually paid by the Receiver; Dr. McNamara agrees that such premium payment shall be deducted by the Receiver from the payment otherwise due to Dr. McNamara as described in paragraph (b) above;
- d. All claims, causes of action, demands, liens on policies owned or controlled by Trade Partners or the Receiver and damages of any kind or character that Dr. Patrick J. McNamara has, had or may have regarding Trade Partners, Inc., the Examiner or the Receiver and all affiliated entities of Trade Partners, Inc. are fully satisfied and to the extent not fully satisfied they are released in full.
- e. The parties ask that the Court enter a final order which resolves all remaining claims, rights and liabilities between the Receivership Estate and Dr. Patrick J. McNamara.

Respectfully submitted,

Dated: August 31, 2006

/s/ Ellen S. Carmody

ELLEN S. CARMODY

United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file

objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-950 (6th Cir. 1981).